IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

DANIEL PEARSALL,   Civil No. 03-1295-CO

          Plaintiff,   Order

      v.

COMMISSIONER of SOCIAL
SECURITY ADMINISTRATION,

          Defendant.

Magistrate Judge John P. Cooney filed Findings and

Recommendation on February 14, 2005, in the above entitled case.

The matter is now before the court pursuant to 28 U.S.C. §

636(b)(1)(B) and Fed. R. Civ. P. 72(b). When either party

objects to any portion of a magistrate judge's Findings and

Recommendation, the district court must make a de novo

determination of that portion of the magistrate judge's report.

See 28 U.S.C. § 636(b)(1); McDonnell Douglas Corp. v. Commodore

Business Machines, Inc., 656 F.2d 1309, 1313 (9th Cir. 1981),

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cert. denied, 455 U.S. 920 (1982).

Plaintiff timely filed objections. The court has,
therefore, given de novo review of Judge Cooney's rulings. I
ADOPT the Findings and Recommendation, except the finding that
the administrative law judge (ALJ) found all of plaintiff's
mother's testimony to be non-probative of disability.

By finding plaintiff not disabled, the ALJ impliedly
rejected plaintiff's mother's opinion that plaintiff cannot work
because of an inability to get along with others. Plaintiff's
mother is not demonstrably competent to opine on plaintiff's
ability to work. Plaintiff's mother's statements regarding
plaintiff's ability to get along with others are probative of the
issue of disability, however. The statements do not conclusively
establish that plaintiff has marked limitations in social
functioning, as plaintiff contends. Thus, it appears to the
court that the ALJ accepted plaintiff's mother's testimony
(except her opinion that plaintiff cannot work), as reflected in
the ALJ's findings that plaintiff is moderately limited in social
functioning, and is limited in his residual functional capacity
to cursory contact with the public and no tandem work with
coworkers. (Tr. 22, 25).

Based on the foregoing and as recommended by Judge Cooney,

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the decision of the Commissioner is affirmed.

IT IS SO ORDERED.

DATED this _____14th____ day of April, 2005.

Michael R. Hogan
United States District Judge

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